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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,956	07/03/2003	Xavier De Sloovere	33154-CIP 1	4628
23589	7590	09/12/2006	EXAMINER	
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER

1615

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/613,956	Applicant(s) DE SLOOVERE ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36,39-54,56 and 58-163 is/are pending in the application.
- 4a) Of the above claim(s) 1-36,39-54,56 and 58-148 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38 and 149-163 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-36,39-54,56 and 58-163 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/03,8/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of GROUP V in the reply filed on 6/23/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

However, species were not elected, therefore, examiner assumes them to be equivalents, in each of the applicable species election requirements on pages 5, 6 and 8 of the office action of 5/11/06, wherein claim 38 was and is, generic- the 4 election of species requirements applicable to the amended invention are indicated below:

1. species of silicon containing particle; one of those at claim 156 or the aluminum containing of claim 152.
2. Coating species; one of claim 157
3. Species of form-powder, aqueous dispersion
4. Ultimate compound, of claim 162 general groups

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38, 149-163 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner assumes silica particles are silicone coated; claim language is confusing- silicon is not silicone- it is unclear in claim 38, if 7% silicone is a coating, as of, claim 157 (but not "silicon oil") or 158, or the 7% silicon is a particle with additional silicon dioxide. Is the silicon particle hydrophobic because it is coated with a Si- containing material?

Claim 157 has no antecedent basis. Claim 163 is non-specific as to how modified.

Claim Rejections - 35 USC § 103

Claim 38, 149, 151-159, 162, 163 are rejected under 35 U.S.C. 103(a) as being unpatentable over WARD et al 6093681 in view of OCHOMOGO et al 6358909.

The instant compositions for the instant combatting living organisms, parasites of plants (col 1, lines 13-33; col 11, top) are shown to provide stable, improved formulations (col 2, bottom; col 3, top) for aqueous dispersion of powders (col 18, bottom)

Exemplified are nanoparticulates of 20-30nm (col 6, lines 24-51). Included are the instant Si hydrophobic modified silicas (col 25, bottom) and EXAMPLES, table, col 37,38 showing aerosil R-202, 805, and 812. Also utilized is xanthum gum (kelzan) and povidone derivatives (agrider).

OCHOMOGO shows silica combined with gums (Example 1).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize particulate silica pest control means, to use any of art recognized means, as of the WARD modified as desired & SHOWN BY OCHOMOGO to increase stability, dispersibility, compatibility of ingredients, processing ease, toxicity to handlers.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

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Selection of specific aerosil particulate is shown as within the purview of the artisan in order to optimize stability, compatibility, dispersion of the particular pesticide to be applied. So is the added colloidal or thickening agent, gum or povidone derivative.

.Applicant has not provided any objective evidence of nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

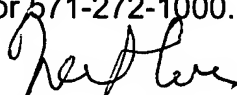
Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY
Primary Examiner
Art Unit 1615
